



FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOS/163343

PRELIMINARY RECITALS

Pursuant to a petition filed January 20, 2015, under Wis. Stat. § 48.64(4), and Wis. Admin. Code § DCF 56.10(1), to review a decision by the Foster Care in regard to Foster Care, a hearing was held on February 05, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the Division of Hearings and Appeals (DHS) has jurisdiction over the conditions on a Children in Need of Protection and Services (CHIPS) order implemented by Milwaukee County Circuit Court.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue
Madison, Wisconsin 53703

By: Attorney Barbara Reinhold
Department of Children and Families
Office of Legal Counsel
635 N 26th Street
Milwaukee, WI 53233

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner is a resident of Milwaukee County.

2. The petitioner has a child that was removed from her home and placed on a Children in Need of Protection and Services (CHIPS) order.
3. On January 20, 2015 the Division of Hearings and Appeals received the petitioner's request for fair hearing stating that she was requesting a foster care CPS hearing because "1) not following court orders, 2) not allowing freer visitation," and 3) my child is not safe."
4. On January 27, 2015 the Department submitted a motion for dismissal stating that the Division of Hearings and Appeals does not have jurisdiction.

DISCUSSION

The Division of Hearings and Appeals (DHA) can hear and decide a case on the merits only if there is legal authority for it to do so. In legal language this is called "jurisdiction". If there is no jurisdiction, the case must be dismissed. Wis. Admin. Code § HA 3.05(4)(a). There is no legal authority for DHA to hear and decide a case concerning a CHIPS order. Pursuant to Wis. Stat. § 48.13, circuit court has jurisdiction over children found to in need of protection and services. If the petitioner disagrees with specific conditions or how the Department is administering the Circuit Court's CHIPS order, then the petitioner needs to file the appropriate motion or motions with Milwaukee County Circuit Court.

CONCLUSIONS OF LAW

DHA does not have jurisdiction over jurisdiction over the conditions on a CHIPS order implemented by Milwaukee County Circuit Court.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

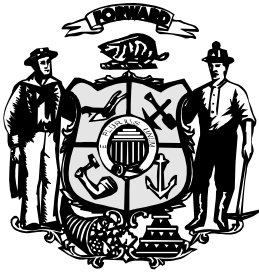
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 5th day of February, 2015

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on February 5, 2015.

Foster Care
Attorney Barbara Reinhold